28th Congress, 1st Session. Rep. No. 404. 43 Ho. of Reps.

[MR. SAMPLE'S REPORT.]

MASSACHUSETTS RESOLUTIONS.

April 4, 1844.
Read, and laid upon the table.

Mr. Sample, *from the Select Committee of nine, appointed on the 22d of December last, on the Resolutions of the Legislature of Massachusetts, made the following*

REPORT:

The undersigned, a member of the Select Committee to whom was referred a resolution of the Commonwealth of Massachusetts, and various petitions from citizens of the States of Ohio, New York, and Indiana, proposing an amendment of the Constitution of the United States, has, in common with the other members of the committee, had the subject under consideration, and respectfully submits his views thereon. The resolution alluded to is as follows:

"Representatives and direct taxes shall be apportioned among the several States according to their respective numbers of free persons, including Indians not taxed. The actual enumeration shall be made within two years from the date of the adoption of this amendment, in the manner provided by the Constitution, and within every subsequent term of ten years, in such manner as the Congress shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative."

The petitions above mentioned are of like import with the foregoing resolution, but varied from it in phraseology.

The undersigned, in approaching this important question, is conscious of his inability to do it that justice which its consequence and magnitude demand; and he is also well satisfied, from the excited condition of the public mind on the question of slavery, which is involved in the proposition, that whatever views the committee may have, and whatever conclusions it may arrive at, general satisfaction will not be given. However this may be, it is, nevertheless, his duty to meet the question unawed by such considerations, and to present his views of it frankly and candidly; and, in so doing, he will endeavor to confine himself as strictly to the subject to be considered as its nature will permit.

During the revolutionary war the original thirteen States, which afterwards adopted the present Constitution as their rule of government, were bound together by the "Articles of Confederation." These articles were thirteen in number, and by virtue of them, the "United States," as the confederacy was styled, had granted to them by the States certain powers "for their common defence, the security of their liberties, and their mutual and general welfare." For four years after the termination of the revolutionary war, the Union of the States existed under these articles; but their progress to prosperity was continually em-

barrassed and retarded by defects in this organization. Various powers of sovereignty remained with the States respectively, which were necessary to belong to the General Government, in order that the nation might attain that high destiny which soil, climate, resources, and the energy and genius of her people would insure to her, with a form of government properly and judiciously adapted to their condition and circumstances. Sensibly impressed with this opinion, the Congress, on the 21st of February, 1787, adopted a resolution providing that a convention, composed of delegates from the several States, should be holden at Philadelphia, for the purpose of revising the articles of confederation. This convention was composed of delegates from all the States of the confederacy, except Rhode Island. As members of this convention, were some of the choicest spirits of the age. Men who had labored fervently together through the eventful period of the Revolution, both in the battle-field and in the senate, to achieve our liberty, had now, by the command of a grateful people, assembled together for the laudable purpose of placing their country's freedom on a firmer basis, and of securing and transmitting to posterity that independence which their valor and patriotism had so nobly won. Representing, as they did, people of diversified interests, feelings, and institutions, various perplexing questions presented themselves, which, in order that success might attend their efforts, and union and harmony prevail, they should meet in the spirit of concession and compromise. Among these questions the most imposing and difficult of adjustment were the slave-trade, representation, and taxation. From the earliest settlements of the colonies, the slave-trade, which is now becoming so abhorrent to all Christendom, was openly encouraged and commanded by the mother country, not only as a source of profit to her merchants and others engaged in it, but as providing the means of increasing products for her commerce. Many of the colonies, including Virginia, remonstrated in vain against its exercise within their limits; but cupidity and avarice prevailed over justice and humanity, and the blighting and odious system of slavery was fastened upon the colonies.

Early in the deliberations of the convention, the question of the continuance of the slave-trade was discussed. No prohibition or restriction of it was contained in the articles of the confederation; and it was carried on at the pleasure of the States. The inhabitants of the several States engaged in it at their pleasure, where they were not prevented by the laws of those States which had prohibited it. The people of some of the States where the trade was forbidden, prompted by the desire of gain, carried it on with the States whose laws permitted it. Inhabitants of New England and the middle States engaged in it in the Carolinas and Georgia. The enemies of this traffick in human beings in the Convention, claimed that it should be placed within the control of the General Government by the Constitution about being formed, in order that it might be effectually and entirely stopped. One would have supposed that this proposition, required by both justice and humanity, would have been agreed to without opposition. At this day it certainly would have been, but the history of the convention shows a different sentiment and feeling; and as an evidence of the indifference of the people even of the Northern States on the subject, we find members from New England who were willing to leave it under the control of the States, while Southern members were anxious that it should be placed under the control and jurisdiction of the General Government, that it might be the more certainly and effectually abolished.

Mr. Martin, of Maryland, who was a delegate, was a strenuous advocate of its total abolition, and desired to vary article 7, section 4, which was in the

following words: "No tax or duty shall be laid by the Legislature on articles exported from any State, nor on the migration or importation of such persons as the several States shall think proper to admit, nor shall such migration or importation be *prohibited*," so as to allow a prohibition or tax on the importation of slaves. He said: "In the first place, as five slaves are to be counted as three freemen in the apportionment of representatives, such a clause would leave an encouragement to this traffic. In the second place, slaves weakened one part of the Union, which the other parts were bound to protect; the privilege of importing them was therefore unreasonable. And, in the third place, it was inconsistent with the principles of the Revolution, and dishonorable to the American character to have such a feature in the Constitution." On the other hand, Mr. Rutledge, of South Carolina, said he "did not see how the importation of slaves could be encouraged by this section. He was not apprehensive of insurrection, and would readily exempt the other States from the obligation to protect the Southern against them. Religion and humanity had nothing to do with this question. Interest alone is the governing principle with nations. The true question at present is, whether the Southern States *shall* or shall *not* be parties to the Union. If the Northern States consult their interests, they will not oppose the increase of slaves, which will increase the commodities of which they will become the carriers." Mr. Ellsworth, of Connecticut, concurred with Mr. Rutledge, and said he "was for leaving the clause as it stands. Let every State import what it pleases. The morality or wisdom of slavery are considerations belonging to the States themselves. What enriches a part enriches the whole, and the States are the best judges of their particular interest. The old confederation had not meddled with this point; and he did not see any greater necessity for bringing it within the policy of the new one." Mr. Pinckney said "that South Carolina would never receive the plan if it prohibits the slave-trade. * * * * If the States be all left at liberty on this subject, South Carolina may, perhaps, by degrees, do of herself what is wished, as Virginia and Maryland already have done."

Mr. Sherman, of Connecticut, was for "leaving the clause as it stands. He disapproved of the slave-trade; yet as the States were now possessed of the right to import slaves, as the public good did not require it to be taken from them, and as it was expedient to have as few objections as possible to the proposed scheme of government, he thought it best to leave the matter as we find it." And again he said: "It was better to let the Southern States import slaves than to part with them, if they made that a *sine qua non*. He was opposed to a tax on slaves imported, as making the matter worse, because it implied they were property."

Mr. Wilson, of Pennsylvania, advocated the restriction and control of the trade by the General Government.

Mr. Baldwin, of Georgia, "conceived national objects alone to be before the Convention; not such as, like the present, were of a local nature."

Mr. Gerry, of Massachusetts, "thought we had nothing to do with the conduct of the States as to slaves, but ought to be careful not to give any sanction to it."

Mr. Dickinson, of Delaware, "considered it as inadmissible, on every principle of honor and safety, that the importation of slaves should be authorized to the States by the Constitution."

Colonel Mason, of Virginia, said: "This infernal traffick originated in the avarice of British merchants. The British Government constantly checked the

attempts of Virginia to put a stop to it. * * * Maryland and Virginia, (he said) had already prohibited the importation of slaves expressly. North Carolina had done the same in substance. All this would be in vain if South Carolina and Georgia be at liberty to import. * * * Slavery discourages arts and manufactures. The poor despise labor when performed by slaves. They prevent the emigration of whites, who really enrich and strengthen a country. They produce the most pernicious effects on manners. Every master is born a petty tyrant. They bring the judgment of Heaven on a country. * * * He lamented that some of our Eastern brethren had, from a lust of gain, embarked in this nefarious traffick. He held it essential, in every point of view, that the General Government should have power to prevent the increase of slavery."

Mr. Randolph, of Virginia, was for committing the article, "in order that some middle ground might, if possible, be found. He could never agree to the clause as it stands. He would sooner risk the Constitution. * * * Let us then (he said) try the chance of a commitment."

On the question of commitment, Connecticut, New Jersey, Maryland, Virginia, North Carolina, South Carolina, and Georgia, voted aye—7. New Hampshire, Pennsylvania, and Delaware, no—3. Massachusetts absent.

This clause was afterwards reported by the committee, so amended as to admit such persons as the several States then existing should think proper to admit; and that no prohibition should take place prior to the year 1800; and that a tax might be imposed at a rate "not exceeding the average of the duties laid on imports."

General Pinckney, of South Carolina, moved to strike out the words "the year eighteen hundred," as the year limiting the importation of slaves, and to insert the words, "the year eighteen hundred and eight."

Mr. Gorham, of Massachusetts, seconded the motion.

This motion was opposed by Mr. Madison, of Virginia, who said that "twenty years will produce all the mischief that can be apprehended from the liberty to import slaves. So long a term will be more dishonorable to the American character than to say nothing about it in the Constitution."

The motion thus to amend was carried in the affirmative: New Hampshire, Massachusetts, Connecticut, Maryland, North Carolina, South Carolina, and Georgia, aye—7. New Jersey, Pennsylvania, Delaware, and Virginia, no—4.

Thus we perceive that many of the members of the Convention yielded their convictions of what they deemed to be right, in order to produce that union of the States so ardently desired; and this vexed question of the slave-trade was compromised; and, after a limited time, was left to the discretion of Congress to abolish it. Happy would it have been for the country had it been peremptorily and unconditionally prohibited by the Constitution at the time of its adoption. But instead of indulging in unavailing regrets, we should rather congratulate ourselves upon the prosperous termination of those questions which so long threatened to keep the States asunder.

Another of the questions which gave rise to long and tedious debate, and for a long time hung in doubtful suspense, was the one now under consideration by the committee, viz: representation and taxation. Various plans were submitted to the consideration of the Convention. Some proposed that the States should be represented in proportion to their contribution of revenue; others, that they should have a representation according to their respective numbers of free inhabitants; and others, again, according to the numbers of all persons within them,

without regard to color or condition. Out of these various principles and opinions, the plan adopted by the Convention was, after a long and tedious controversy, finally produced. The smaller States contended that each State, large or small, should be entitled to but one vote, as by this means only could the rights of the smaller States be maintained and preserved. The larger States, on the other hand, insisted that each State should have a suffrage in the legislature corresponding with its numbers, according to the ratio of representation which should be agreed upon. This was another matter of serious difference, and it was carried so far as to elicit a proposition to equalize the States by altering their boundaries. Dr. Franklin rather favored this last proposition, but it was considered impracticable, and was dropped.

It was proposed by Mr. Sherman, "that the proportion of suffrage, in the first branch, should be according to the respective number of free inhabitants." By Mr. Rutledge it was proposed, "that the proportion of suffrage, in the first branch, should be according to the quotas of contribution." Mr. Butler advocated the latter mode, and stated "that money was power; and that the States ought to have weight in the government in proportion to their wealth." Mr. Gerry thought "that representation ought to be in the combined ratio of numbers of inhabitants and of wealth, and not of either singly." Mr. Madison "suggested, as a proper ground of compromise, that in the first branch the States should be represented according to their number of free inhabitants; and in the second, (which had for one of its primary objects the guardianship of property,) according to the whole number, including slaves."

During this time, the basis of representation and taxation, as adopted, was under consideration, and which had been proposed on the motion of Mr. Wilson, of Pennsylvania. Mr. Butler and Mr. Pinckney "insisted that blacks be included in the rule of representation equally with the whites;" and moved that the words "three-fifths" be struck out. Mr. Gerry thought "that three-fifths of them was, to say the least, the full proportion that could be admitted. Mr. Butler insisted "that the labor of a slave in South Carolina was as productive and valuable as that of a freeman in Massachusetts; that as wealth was the great means of defence and utility to the nation, they were equally valuable to it with freemen." Mr. Mason "could not agree to the motion, notwithstanding it was favorable to Virginia, because he thought it unjust."

On the motion of Mr. Butler, for considering blacks as equal to whites in the apportionment of representation, the vote stood: Delaware, South Carolina, Georgia, aye—3; Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, no—7. New York not on the floor.

The proposition was for a considerable time debated after this vote, and various modifications were suggested, lessening the basis of representation in the slaveholding States; but the Southern delegates stood firm and unyielding. Mr. Davie said, "He was sure that North Carolina would never confederate on any terms that would not rate them (the slaves) at least as three-fifths. If the Eastern States meant, therefore, to exclude them altogether, the business was at an end." On the other hand, Mr. Morris, of Pennsylvania, with warmth, said, "As the compact was to be voluntary, it is in vain for the Eastern States to insist on what the Southern States will never agree to. It is equally vain for the latter to require what the other States can never admit; and he verily believed the people of Pennsylvania will never agree to a representation of negroes." Mr. King said, "The admission of slaves was a most grating circumstance to his mind, and he believed would be so to a great part of the people of America."

Thus was this question the subject of discussion in the Convention, at various periods, from the early part of June until the 8th of August following, when it was finally disposed of by adopting the basis of representation and direct taxes, as contained in the third clause of the second section of the first article of the Constitution, by the votes of all the States in its favor, except the State of New Jersey. The Constitution, formed by this Convention, did not, probably, fully meet the views and wishes of a single member in it. It was, at the time, regarded as the result of concessions and compromises, made for the common good. Many of the members left the Convention under the dread apprehension that it would not be assented to by the requisite number of the States to make it operative, and, at last, discord and confusion would be the bitter fruits of the Revolution. Fortunately, a happier fate awaited us. In due time it was received and accepted by all the States parties to it, and also by the State of Rhode Island, which was not represented in the Convention. In addition to those thirteen States, thirteen new States have come into the Union since its adoption. It has since proved the safeguard of our rights and our property, and the refuge of the exiles from tyranny in all parts of the world. So far, in all things, has it proved equal to the designs and purposes for which it was formed. The fondest hopes of its friends have been realized, and the desires of its enemies have been disappointed.

The institution of slavery, existing, as it does, in many of the States, is deplored as a moral, social, and political evil. We have the misfortune to bear the evil and to endure the scorn; but we are guiltless of its institution. It was thrown upon us against our consent, and when we had not the power to resist it. Its existence in the States is beyond the control of the General Government. It can have no concern with it there. Willingly would many of them rid themselves of it if they could; but how to effect that result with safety to the two races, is the great difficulty. Domestic slavery does not prevail to so great an extent now as it did at the adoption of the Constitution, in proportion to the whole number of inhabitants. Massachusetts, at the adoption of the Constitution, had as much cause of complaint against the slave representation as she now has, but she did not refuse the Constitution on that or any other ground. Her Convention ratified and confirmed it, and thereby assented to the compromises made on this and other questions by her delegates in the General Convention. Mr. King, one of her delegates in the Convention, strenuously opposed this feature while it was under discussion, but he signed the Constitution containing it, as a representative of the Commonwealth of Massachusetts. Of the Convention of that Commonwealth, which was afterwards held for the purpose of considering the Constitution for acceptance or rejection, Mr. King was also a member. He then sustained it, and, by his eloquence, urged its acceptance; and when this very clause, now so repugnant to the feelings of that State, was under consideration, he said: "By this rule is representation and taxation to be apportioned. And it was adopted, because it was the language of all America." Mr. King voted for its ratification. It was assented to, and received by Massachusetts on the 6th of February, 1788, she being the fifth State which had then ratified it—Delaware, Pennsylvania, New Jersey, and Connecticut, having accepted it before her.

No State has derived more benefits from the Union than has Massachusetts—few have derived as many. Under its auspices her commerce has extended itself to the remotest parts of the earth, and has there found the protecting arm of the Constitution to shield and sustain it. Money from the public treasury

has been profusely expended on her harbors and ports, to give security to her shipping and convenience to her merchants. The public treasury is open to reward her hardy fishermen for the perils they encounter on the deep, in the form of bounties. Statutes are passed to protect her manufactures against foreign competition. Under these, and many other similar laws, passed by Congress under this Constitution, has Massachusetts become one of the most wealthy States of the Union. No people have greater claims upon the regard and admiration of mankind for their enterprise and energy of character than have hers; and they surely cannot deny but their claims to these high encomiums are in a great degree owing to the opportunities for the exercise of their genius and energy, secured to them under the constitution and form of government under which they live.

Our country is at the present moment in a state of feverish excitement on the subject of slavery, and many of our fellow-citizens of the non-slaveholding States are desirous that the free States shall be dissolved from all connexion with it, either by its unconditional abolition in the States where it prevails, or that a separation shall take place. This proposition is made by one of the petitions before us. Some have even predicted, that unless the amendment proposed by the Commonwealth of Massachusetts be adopted, the free States will secede from the Union. The undersigned is convinced that if the amendment were adopted, a dissolution of the Union would be the consequence; and if dissolution is thus inevitable, is it not better that it should take place under the Constitution as it exists, than that it should be the result of any ill-advised and impolitic amendment? But why make this proposition? It is only calculated to disturb the quiet and peace of the country, to keep up jealous feelings and angry strife among our people, who already are too prone to sectional distrust and jealousy. No one for a moment can believe that there is the remotest probability of the object of the resolution and petitions being attained, for even if the requisite majority in Congress should recommend the amendment, few, if any of the States, would accept it; whereas, it requires three-fourths of them to agree to any amendment before it can operate as such.

The concession of the free States, in yielding to the demand of the Southern States, that three-fifths of their slaves should be represented, was great; it went beyond what justice demanded; but, for the sake of harmony, it was patriotically yielded, as it was the only terms upon which the Union could have been formed. All the States had stood together, shoulder to shoulder, and with an unbroken front had resisted and withstood the power of Great Britain, during the trying period of the Revolution, until that nation, haughty and powerful as she is, acknowledged our independence. That end—the reward of the sacrifices of blood and treasure which our fathers had made—having been attained, all its benefits to us would have been lost without the formation of this Union. It was formed. It was an agreement solemnly made, in good faith, by our ancestors. Shall we, their posterity, prove faithless to this their obligation? No; as a law-abiding people, it is our duty to adhere to it and keep its covenants inviolate. By adhering to it, and placing our reliance on the mercies and goodness of a beneficent Providence, under whose bountiful guardianship and protection our fathers passed triumphantly through the trying scenes of the Revolution, and under whose care and goodness we have attained wealth and power as a nation, we shall continue on the road to prosperity, until, by our example, the principles of our government shall become the model of governments for all civilized mankind. May we not, then, rely upon that Providence who has never forsaken us, even in the darkest periods of our history; and who, we

may well hope, will, in his own due time in mercy to both us and the African race, point out the means whereby that people may be restored to those rights to which they are by nature entitled?

The undersigned cannot better dismiss this subject than by citing the language of a renowned son of Massachusetts, who is not more distinguished as a jurist than he is for his patriotism and private virtues. Judge Story, when treating of this clause of the Constitution in his Commentaries upon that instrument, uses the following language: "Viewed in its proper light, as a real compromise, in a case of conflicting interests, for the common good, the provision is entitled to great praise for its moderation, its aim at practical utility, and its tendency to satisfy the people that the Union, framed by all, ought to be dear to all, by the privileges it confers, as well as the blessings it secures. It had a material influence in reconciling the Southern States to other provisions in the Constitution, and especially to the power of making commercial regulations, by a mere majority, which was thought peculiarly to favor the Northern States. It has sometimes been complained of as a grievance; but he who wishes well to his country, will adhere steadily to it as a fundamental policy, which extinguishes some of the most mischievous sources of all political divisions—those founded on geographical positions, and domestic institutions."

The undersigned cannot coincide with the opinion expressed by some of his colleagues, that this is one of the fundamental principles upon which the Constitution was established, and, consequently, it *cannot* be amended in the manner pointed out by the Massachusetts resolution. He regards it simply as a question of expediency; having no doubt of the power of Congress, with the requisite majority, and the confirmation by three-fourths of the States, to make the amendment. The 5th article prohibited the amendment of the first and fourth clauses of the 9th section of the 1st article prior to the year 1808; and also, that "no State, without its *consent*, shall be deprived of its equal suffrage in the Senate."

The first clause of the 9th section of article 1, is the clause which limits the power of Congress over the slave-trade until the year 1808; and the fourth clause of the same section provides that "no capitation, or other direct tax, shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken." These clauses were not amendable until the year 1808, when they became, as well as other parts of the instrument not prohibited, subject to amendment. It is by the 5th article conceded, that, after the year 1808, both the above-named clauses were amendable. The third clause of the 2d section of article 1st, says, that "representatives and direct taxes shall be apportioned among the several States," &c. Now if this clause is amendable in regard to taxation, (which is conceded by the 5th article,) wherein is it not amendable in regard to representation? They both stand precisely on the same footing, and are of course subject to the same control. The undersigned, therefore, considers the question proposed one of expediency merely; and deeming it inexpedient to propose the amendment as contemplated by the resolution and the petitions, concurs with the majority of the committee, in praying to be discharged from the further consideration of the subject.

S. C. SAMPLE.